

In the High Court of Judicature, Travancore-Cochin.

5th day of June 1961.

Referred

His Lordship the Hon'ble Mr. C. Kurih Raman, Chief Justice
and

His Lordship the Hon'ble Mr. Justice V.I. Joseph.

- Appeal Suit No. 48/1959.

Appellants: - defendants 4 and 7:

1. Marayana Pillai Govinda Pillai Arakkal Kizhakkidathu
Veedu, Karappuzha Kara, Kottayam Panchay.

2. V.K. Marayana Pillai, Advocate, Kottayam.

By advocate Sri V. G. Sambasivaram Pillai
Respondents - plaintiff.

The Central Banking Corporation of Travancore Ltd.
formerly called as Travancore State Aided Bank Ltd.

By advocate Sri K.V. Marayanan Nayar.

Appeal against the judgment and decree of the Alleppey Dis-
trict Court in O.S. 211/1109 dated 4-4-1958.

This appeal coming on for final hearing ^{on 6-6-51 and 1961} this day the court

on the same day delivered the following

Judgment.

(Delivered by the Chief Justice).

Defendants 4 and 7 are the appellants. There were money transactions between the plaintiff Bank and the first defendant Bank. These consisted of overdrafts granted by the plaintiff to the 1st defendant. Defendants 2 to 8 were Directors of the first defendant. As security for the overdraft, certain promissory notes and mortgages of hypothecations were assigned by the first defendant in favour of the plaintiff. Defendants 2 to 8 had also executed an agreement making themselves responsible for the discharge of all money debts due by the first defendant Bank to the plaintiff Bank.

3. The plaintiff filed a suit on one of the hypothecations which was the subject matter of the assignment made by the first defendant Bank. The suit was O.S. 133/1109 on the file of the District Court at Alleppey. It was decreed for Rs. 7000 odd. Since

quent to the decree the hypotheca was brought to sale. This was in 1112 when prices were low. At the court sale, there were no outside bidders and therefore the plaintiff Bank purchased the hypotheca for Rs.1768 odd. It is stated that subsequent to the purchase, for about 9 years the property was kept in the possession of the plaintiff bank and that certain improvements also were effected to the property. We are not concerned with this aspect of the question.

3. Directly the sale took place, the price of the property sold was credited in favour of the first defendant bank. This indicates that the transaction as far as the assignment of the hypothecation was concerned terminated on that date. Nine years later, when prices were soaring up the plaintiff bank sold the property for Rs.8000. The contention urged on behalf of the appellants before this court is that the plaintiff bank is liable to account for this Rs.8000 and to give credit for it in its accounts relating to the overdraft granted to the first defendant bank. On the face of it, this contention cannot be accepted as well founded and that is what the court below has held. If the sale was purely for a nominal amount and if the price realised at the sale viz. Rs.1768 odd had been credited in the accounts of the plaintiff Bank in favour of the 1st defendant bank, it might be said that the parties regarded that the purchase of the property was purely nominal and that as long as the plaintiff bank retained possession of the property, it was bound to account for the income and ultimately for the price realised when the property was sold 9 years later. But that was not what happened. The moment the sale took place the price of the property was credited in favour of the first defendant Bank and there was an end of the transaction as far as the plaintiff Bank was concerned. In the circumstances we are satisfied that the view taken by the court below that the plaintiff bank is not liable to account for Rs.8000 realised by sale of the property sold 9 years subsequent to the court sale is correct.

4. The appeal is therefore dismissed with costs.

6th June 1961.

31./6. 1961. Raman, Chief Justice
30./6.1. Joseph, Judge.

(True copy)

[Signature]
Registrar

[Handwritten signature]
Sd/-